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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/672,825

09/26/2003

Michael Ray McLaughlin

71609

8927

7590

11/29/2006

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EXAMINER

FIDEI, DAVID

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/672,825

**Applicant(s)**

MCLAUGHLIN ET AL.

**Examiner**

David T. Fidei

**Art Unit**

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 52-98 is/are pending in the application.
- 4a) Of the above claim(s) 52-89 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 90-98 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>9/5/06</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly submitted claims 52-89 directed to an invention that is independent or distinct from the invention elected on January 9, 2006.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 52-89 are withdrawn from consideration as being directed to a non-elected invention. See MPEP § 809.02(a).

2. This application contains claims 52-89 drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 90-98 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 90 recites an "initial" pressure in the sealed chamber that it is less than ambient. This language is indefinite and unclear in scope. What is the final internal pressure? How can one distinguish a package having this claimed parameter over a similarly constructed package that "lost" its negative internal pressure or never had a negative pressure to begin with? It would appear one would either need to consider the limitation as an absolute part of the package or consider the language as not a necessary part of the package environment.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 90-98 rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dunbar (US Patent no. 3,458,966). In the embodiment of figure 2 a sealed chamber 31 is disclosed comprising a bulk material, wherein the bulk material comprises fibers, (col. 3, line 69) wherein the sealed chamber comprises a top wall, a bottom wall and a plurality of side walls as shown in the figure. The package has a substantially cuboidal shape in as much as is claimed with walls depicted as substantially flat. An evacuator 32 is employed in a fashion described as similar to the embodiment of figure 1.

The only distinction between claim 1 and Dunbar relates to the “density of the bulk material in the sealed chamber is from 0.2 to 0.9g/cm<sup>3</sup>. However, this is a property the Examiner can not determine whether or not it is anticipated or merely an obvious matter of design choice over the disclosure of Dunbar because the reference is silent concerning the density.

When the reference discloses all the limitations of a claim except a property or function, and the examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention but has basis for shifting the burden of proof to applicant as in *In re Fitzgerald*, 619 F.2d 67, 205 USPQ 594 (CCPA 1980). See MPEP § 2112- 2112.02.

As to claim 91, the properties of the fibers, e.g., a cellulose acetate, is a matter of obvious design choice because the particular fibers is merely dependent upon the material one desires to package. It being within the level of ordinary skill to package any material desired.

As to claims 92-94 a manifestly moisture, odor and gaseous barrier polyethylene material is contemplated in col. 4, line 9 of Dunbar.

As to claims 95 and 96, the claimed parameters pertain to dimensional characteristics of the bale. It would have been an obvious matter of design choice to construct the claimed height,

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width, length and volume, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct from the prior art device, Gardner v. TED Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. 2144.04 (IV).

As to claims 97 and 98, the degree of “flatness” of the top wall would have been a matter of routine skill in order to achieve a high degrees of flatness to permit stacking of the bales one atop another.

7. Claims 90-98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swiss document no. 256384 in view of Dunbar (US Patent no. 3,458,966). To the extent that the difference between the claimed subject matter and Dunbar resides in the density of the bulk material in the sealed chamber that is from 0.2 to 0.9g/cm<sup>3</sup>, Swiss document no. 256384 discloses the desirability of packaging cellulose fibers in compressed bulk packages of 61 x 91 cm weighing between 1.8 to 4 kg, see page 2. This converts to 0.32g/cm<sup>3</sup> to 0.72 g/cm<sup>3</sup> density per cm thickness of material well within the claimed parameters.

In the embodiment of figure 2 of Dunbar a sealed chamber 31 is disclosed comprising a bulk material, wherein the bulk material comprises fibers, (col. 3, line 69) wherein the sealed chamber comprises a top wall, a bottom wall and a plurality of side walls as shown in the figure. The package has a substantially cuboidal shape in as much as is claimed with walls depicted as substantially flat. An evacuator 32 is employed in a fashion described as similar to the embodiment of figure 1. It would have been obvious to one of ordinary skill in the art to modify the package of Swiss document no. 256384 by packaging the compressed fibers in cuboidal shape by the manner suggested by Dunbar, in order to form a greater bulk material for shipment and handling of the material.

As to claims 92-94 a manifestly moisture, odor and gaseous barrier polyethylene material is contemplated in col. 4, line 9 of Dunbar.

As to claims 95 and 96, the claimed parameters pertain to dimensional characteristics of the bale. It would have been an obvious matter of design choice to construct the claimed height, width, length and volume, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct from the prior art device, Gardner v. TED Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. 2144.04 (IV).

As to claims 97 and 98, the degree of "flatness" of the top wall would have been a matter of routine skill in order to achieve a high degrees of flatness to permit stacking of the bales one atop another.

#### ***Response to Arguments***

8. Applicant's arguments with respect to claims 90-98 have been considered but are moot in view of the new ground(s) of rejection.

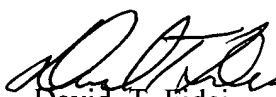
#### ***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the Examiner concerning the merits of the claims should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David T. Fidei  
Primary Examiner  
Art Unit 3728

dtf  
November 17, 2006